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IN THE SUPREME COURT OF THE STATE OF IDAHO

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BOISE, IDAHO

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STATE OF IDAHO,

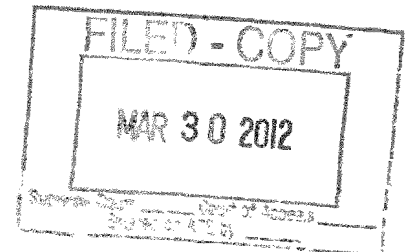
Plaintiff-Respondent,

v.

Daniel Lute,

Defendant-Appellant.

NO. 39252



APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE RONALD J. WILPER
District Judge

LAWRENCE G. WASPEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4034

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

DANIEL LUTE
IDJC #18805
JMSI-A
P.O. Box 51
BOISE, IDAHO 83707

IN PROPRIA PERSONA
DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

Daniel Lute appeals from the district court's refusal to enforce the Idaho Supreme Court's Order to vacate the conviction. The entire proceedings of the case were VOID from the beginning, as there was no indictment to grant the district court subject matter jurisdiction. Notwithstanding the district court proceeded - including ordering a Presentence Investigation (PSI) report.

Statement of the Facts and Course of the Proceedings

Daniel Lute, In Personam, successfully persuaded the Idaho Supreme Court to reverse the Idaho Appellate Court, and the district court, and the Idaho Supreme Court Ordered the district court, in the case of: State of Idaho v. Daniel Lute, HCR #20165, to vacate the conviction. The void proceedings, charged, convicted, ordered a Presentence Investigation Report, and sentenced Lute for an "offense" of "Battery with the intent to commit a serious felony, to wit: kidnapping" (There is no such a crime in Idaho Statutes). The district court obeyed the Idaho Supreme Court and issued the order. Nevertheless, the State of Idaho (plaintiff in the above void proceedings) continues to maintain records of the void proceedings, throughout ~~State~~ of Idaho files and records on Daniel Lute, providing the void proceedings legal recognition, contrary to law. Lute requested the district court to Order the State of Idaho to expunge all records of the void proceedings - but the district court refused to do so; even though the district court knows the State of Idaho is giving validity to the void proceedings and using the void proceedings against Lute. (A collateral effect, contrary to law). Expunging the void proceedings from all State of Idaho records is the only way to effectively enforce the order to vacate the proceedings/conviction. Judge Wilper claims that he can see no purpose to Order the expunction of all records of the void proceedings - clearly retaliation at being reversed.

ISSUE

Did the district court error in failing to enforce the rule of law that: "What was void upon its inception continues to be void?"

Argument

An invalid indictment is a void proceeding. State v. Dalling, 123 Idaho 203 (1996); State v. Lute, 150 Idaho 837 (2011). See also U.S. v. Daniels, 902 F.2d 1238 (7th Cir. 1990) (indictment by an improperly extended grand jury is "void").

In Buller v. State of Idaho, the Idaho Supreme Court recognized that: "A felony conviction has collateral consequences...". 129 Idaho 849 (1997). The practical effect of correcting this manifest injustice is because recognizing a proceeding not authorized by law, seriously affects the fairness, integrity, and reputation of the government. U.S. v. Davis, 407 F.2d 162, 164 (3rd Cir. 2005); U.S. v. Recio, 371 F.2d 1093, 1103 (9th Cir. 2004).

Black's Law Dictionary reads:

"Void judgment. A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, satisfied, or enforced, in any manner or to any degree. One source of a void judgment is the lack of subject-matter jurisdiction..."

To fail in its duty to rule that what was void remains void and has no legal re-signation, the district court is ignoring the law of the land. The only way to enforce the order vacating the conviction, is to order all State of Idaho records and files reflecting the void proceedings to be expunged (destroyed).

An established abridgement of a constitutional right is deemed a manifest injustice as a matter of law. State v. Detweiler, 115 Idaho 443 (Ct. App. 1989).

The United States Supreme Court held that pro se litigant's documents are to be held to a "liberal standard." Haines v. Kerner, 404 U.S. 519, 520 (1972). In appropriate circumstances, a court should construe "other types" of pro se pleadings as their properly pleaded equivalents. See U.S. v. Span, 75 F.3d 1323, 1326 (11th Cir. 1996). The substance not the form is to be considered in a pro se pleading. Haines v. Kerner, 404 US at 520-21; Still v. State, 95 Idaho 766 (1974).

STANDARD OF REVIEW

Jurisdiction is a question of law review de novo. State v. Barras, 131 Idaho 379, 381 (1998); State v. Law, 131 Idaho 40, 43 (Ct. App. 1997).

DID THE DISTRICT COURT LACK JURISDICTION?

The State of Idaho argued this the first time before this Idaho Appellate Court, this court accepted their argument; however, the Idaho Supreme Court reversed.

The State of Idaho failed to raise this defense in the district court, therefore they have failed to preserve this defense, and failed to raise it in a timely manner. Idaho Rules of Civil Procedure, Rule 12. See also Hunter v. U.S., 160 F.3d 1109, 1113-14 (6th Cir. 1998).

The Idaho Supreme Court held that "a rule extending jurisdiction" exists in I.R.C.P., Rule 66. State v. Dukaski, 139 Idaho 352, (2003); Compton v. Compton, 101 Idaho 328 (1980).

¹ Lute did not file a motion - rather Lute wrote a letter to the district court requesting

the court to order the expunction of all proceedings of State of Idaho v. Daniel Lute HCR #2016, including the Presentence Investigation Report. I.R.S.P., Rule 60 allows for the relief sought by Lute. (I.R.S.P., Rule 60(b)(3); 60(b)(4); 60(b)(5) and 60(b)(6)). The rule states that a motion seeking relief is timely if made within six (6) months, or within one (1) year under subdivision (b) of this rule. So, if the district court saw Lute's letter requesting relief as a motion under this rule - the district court was with jurisdiction to consider the motion. Or if the district court should have viewed the letter as a Petition for Writ of Mandamus/Prohibition, then the state's failure to file an Answer should have been viewed as a default and the relief should have been granted per a default judgment. Whether the proper vehicle (form) for the substance was a motion under I.R.S.P., Rule 60(b) or as a Writ of Mandamus/Prohibition, Lute was timely in seeking the enforcement of the Idaho Supreme Court's order by seeking the expunction of all the proceedings in the void proceeding/vacated proceeding/conviction.

Relief Sought By Lute

The Idaho Code states that a Presentence Investigation Report may only be ordered after a valid conviction. The Idaho Supreme Court held that these proceedings are to be vacated; therefore, there is no valid conviction. All of the proceedings are vacated. Meaning that Lute is not to suffer any collateral consequences from the proceedings, and the proceeding cannot have any validity in any manner. Yet, the State of Idaho continues to give validity to the vacated proceedings by maintaining copies of the P.S.I., orders in these proceedings, throughout State of Idaho records and files. These records of this P.S.I. are illegal per Idaho Code by existing without a valid conviction. The only remedy is to expunct all records of the proceedings, to include the P.S.I. report.

Lute did not request a "partial reduction" Lute was not represented by an attorney i.e. an attorney should have been appointed to secure Lute's interests in the total expunction of all the vacated proceedings. Whether the letter was a motion per I.R.S.P. Rule 60(b) or a Writ of Mandamus/Prohibition.

Merely amending the records to include an order vacating the conviction, indicating a conviction has been held invalid does not afford Lute adequate relief from the effects of the records themselves, and only the total destruction of all the proceedings will eliminate the evil sought to be corrected. Grandison v. Warden Maryland House of Correction, 423 F.Supp. 112, 115-16 (D.C. Md 1976); United States v. Bush, 438 F.Supp. 839, 840 n.1 (E.D. Pa. 1977).

Conclusion

Lute respectfully requests this Court order the expunction of all the proceedings, in all the State of Idaho's records. What was void from its inception can never become valid in any manner.
DATED this 28th day of March, 2012.

Chad Lute
Appellant - In Pro Persona

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the foregoing document was given to the IMSI paralegal on this 28th day of March, 2012, with instructions to photocopy and mail to:

Lawrence G. Warden, Attorney General, State of Idaho, P.O. Box 23720, Boise, IDAHO 83720-0010